Supreme Court, U.S.
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No. 00-44

IN THE

Supreme Court of the United States

MOBILE MINING & MINERALS,

Petitioner,

v.

DAVID R. NIXSON and DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, U.S. DEPARTMENT OF LABOR,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF MARITIME LAW ASSOCIATION OF THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF GRANTING THE PETITION

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BRIEF OF MARITIME LAW ASSOCIATION OF THE UNITED STATES AS *AMICUS CURIAE* IN SUPPORT OF GRANTING THE PETITION FOR CERTIORARI OF MOBILE MINING & MINERALS[1]

The Maritime Law Association of the United States (hereinafter "MLA") respectfully submits this brief as *amicus curiae* in support of the Petition for Writ of Certiorari filed by Mobile Mining & Minerals.[2]

INTEREST OF *AMICUS CURIAE*

The MLA is a national bar association founded in 1899, with a membership of approximately 3,600 attorneys, law professors and others interested in maritime law. Its attorney members, most of whom are specialists in admiralty law, represent the full gamut of maritime interests, including shipowners, charterers, stevedores, cargo interests, port authorities, seamen, longshoremen, passengers, marine underwriters, and other maritime claimants and defendants.

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1. This Brief was authored by James Patrick Cooney, attorney for the Maritime Law Association of the United States, and William R. Dorsey, III, President of the Maritime Law Association of the United States. No person or entity other than the Maritime Law Association made a monetary contribution to the preparation or submission of the Brief.

2. The MLA has received and filed concurrently with the filing of this Brief the written consent of Hon. Seth P. Waxman, Solicitor General of the United States; Dennis Brown, Esq., attorney for the Respondent Nixson; and Robert Long, Esq., attorney for the Petitioner.

The objectives of the MLA, as stated in its Articles of Association, are

> to advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, to promote uniformity in its enactment and enforcement, to furnish a forum for the discussion and consideration of problems affecting the Maritime Law and its administration, to participate as a constituent member of the Comité Maritime International and as an affiliated organization of the American Bar Association, and to act with other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices in different nations.

In furtherance of these objectives, the MLA has supported the enactment of a wide-range of legislation dealing with maritime matters during its 100 years of existence, including the Carriage of Goods by Sea Act,[3] the Federal Arbitration Act,[4] and the Foreign Sovereign Immunities Act.[5] The MLA has also cooperated with congressional committees in the formulation of other maritime legislation.[6]

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3. 46 U.S.C. §§ 1300-1315.

4. 9 U.S.C. §§ 1-16.

5. 28 U.S.C. §§ 1330, 1602-1611.

6. *E.g.*, Water Pollution Control Act Amendments of 1972, 33 U.S.C. §§ 1251-1376; Convention of the International Regulations to Prevent Collisions at Sea, 28 U.S.T. 3459, *as amended*, T.I.A.S. 10672; United States Inland Navigation Rules, 33 U.S.C. §§ 2001-2073.

The MLA assists in maritime projects undertaken by agencies of the United Nations, and works closely with the International Maritime Organization ("IMO") in the formulation of uniform international maritime standards. The President of the MLA (or his delegate) serves as a member and legal advisor to the United States delegation to the IMO Legal Committee

The MLA is one of some 54 national maritime law associations constituting the Comité Maritime International,[7] seeking international uniformity in maritime laws through international conventions.

In 1975, prompted by the need for both national and international uniformity in maritime law, the MLA passed a resolution asserting that the MLA "considers it of the utmost importance and in the public interest that maritime law be uniform to the maximum extent possible throughout the United States." In 1986, the MLA by resolution reaffirmed its "support of the importance of maintaining national uniformity in maritime law" and approved "action, subject to the By-Laws, to express such support, including filing amicus briefs and supporting proposed legislation or other action which favors uniformity in maritime law, and opposing proposed legislation or other action which impairs uniformity in maritime law."

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7. Its members include the following countries: Argentina, Australia and New Zealand, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Croatia, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Finland, France, Germany, Greece, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Korea, D.P.R. Korea, Malaysia, Malta, Mauritanie, Mexico, Morocco, Netherlands, Nigeria, Norway, Panama, Peru, Philippines, Poland, Portugal, Senegal, Singapore, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States, Uruguay, Russia, Venezuela and Yugoslavia.

In promoting the uniformity of maritime law, the MLA is as concerned with the uniform application of maritime law among the various Circuit Courts of Appeals of the United States, as it is with the need for the Maritime Law of United States to be applied uniformly by both state and federal courts and for there to be a uniform approach to international maritime regulation through the growing body of international conventions promulgated by the IMO and joined in by the United States. In furtherance of its policy with regard to uniformity, the MLA has appeared before this Court as *amicus curiae* on numerous occasions to argue in favor of uniformity in the substance and application of the Maritime Law of the United States.[8]

SUMMARY OF THE ARGUMENT

There is a conflict among the United States Circuit Courts of Appeals on whether the coverage of the Longshore and Harbor Workers' Act extends to entire facilities where vessels are loaded and unloaded or to only those specific portions of the facility where the loading and unloading occurs. The MLA desires that the Court grant certiorari to resolve this conflict and, thus, establish uniformity in the laws.

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8. *E.g. Locke v. United States*, __ U.S. __, 120 S. Ct. 1135 (2000); *Bouchard Transp. Co., Inc. v. United States*, 525 U.S. 1171 (1999) (Mem.); *Yamaha Motor Corp., U.S.A. v. Calhoun*, 515 U.S. 1186 (1995); *Exxon Co., U.S.A. v Sofec, Inc.*, 516 U.S. 1091 (1996); *American Dredging Co. v. Miller*, 510 U.S. 443 (1994); *Sisson v. Ruby*, 497 U.S. 358 (1990); *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1989); *OffshoreLogistics, Inc. v. Tallentire*, 477 U.S. 207 (1986); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978); *Askew v. American Waterways Operators*, 411 U.S. 325 (1973); *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970).

ARGUMENT

This case presents the Court with an opportunity to insure that the Longshore and Harbor Workers' Act, 33 U.S.C. § 901, *et seq.* ("the Act"), is applied uniformly throughout the country.

Coverage under the Act is limited to persons engaged in maritime employment[9] and who are injured or killed in the course of their employment at a covered situs.[10] The scope of the Act, with respect to what constitutes a "covered situs," was expanded in 1972. The 1972 amendments extended the geographical coverage of the Act beyond the waters edge by defining the navigable waters of the United States to include "any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel."[11] Congress expanded the geographical coverage of the Act shoreside to avoid the problem of maritime employees literally walking in and out of coverage as they walked up and down the gangplank from ship to shore during the loading and unloading of vessels. However, it is unclear whether Congress intended by this language to extend coverage to an entire manufacturing facility adjacent to a marine terminal or dock.

Many such manufacturing facilities are located in mixed marine and industrial areas built along waterways such as

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9. 33 U.S.C. § 902(3).

10. 33 U.S.C. § 903(a).

11. 33 U.S.C. § 903(a).

the Mississippi River or, as in the case before the Court, the Houston Ship Channel. The fertilizer manufacturing plant operated by Petitioner Mobil Mining and Materials is but one example of the kind of facility at which the traditional maritime activities of loading and unloading vessels occur in conjunction with a manufacturing process. Other examples would include oil and petrochemical refineries built along navigable waterways that have marine terminal facilities to allow for the delivery and shipment of crude oil and refined petroleum products. Such refinery or manufacturing complexes often cover huge geographical areas in which the area devoted to traditional maritime activities is insignificant when compared to the entire contiguous plant area. In such a case, is the entire plant area a covered situs, or is only that portion of the plant area where marine activities are conducted? Put simply, the question is whether a maritime employee is covered by the Act if injured anywhere on the plant premises, or is covered only if injured while in that area within the plant premises "customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel."[12]

As pointed out by the Petitioner, there is a conflict on this issue between the United States Court of Appeals for the Fourth Circuit on the one hand, and the United States Courts of Appeals for the First and Fifth Circuits, on the other. The Fourth Circuit, in the case of *Jonathan Corp. v. Brickhouse*, 142 F.3d 217 (4th Cir.), *cert. denied*, 525 U.S. 1040 (1998), narrowly construed the scope of § 3(a) of the Act by holding that only those areas customarily used for maritime purposes within the larger geographical confines of a manufacturing facility constitute a covered situs.

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12. 33 U.S.C. § 903(a).

However, two decades earlier, the United States Court of Appeals for the First Circuit reached the opposite conclusion. *Prolerized New England Co. v. Benefits Review Bd.*, 637 F.2d 30 (1st Cir. 1980). The facts of *Prolerized New England* reveal that an employee was injured while working on a conveyor belt transporting automobiles and large appliances to be processed into scrap. The scrap metal processing plant was located adjacent to navigable waters where barges were loaded with scrap metal. In holding the employee's injury fell within the Act's coverage, the First Circuit determined that the employee was in an area customarily used by the employer in loading a vessel, even though the location of the conveyor belt was not part of the area devoted to the loading of barges.

In the present case the Benefits Review Board and the Fifth Circuit held, in unreported decisions, that an entire manufacturing plant constituted a covered situs whenever any part of the plant is used to load or unload vessels. The Fifth Circuit relied upon its own earlier *en banc* decision in *Texports Stevedore Co. v. Winchester*, 632 F.2d 504 (5th Cir. 1980) (en banc), in reaching this conclusion.

In joining as an *amicus curiae* with the Petitioner in requesting this Court to grant certiorari, the MLA takes no position on the merits of the issue presented, but rather urges that a uniform national rule be established regarding whether the entirety of a manufacturing facility located adjacent to navigable water at which vessels are loaded and unloaded constitutes a covered situs under § 3(a) of the Act or whether that situs is limited to only those areas within the confines of the facility actually "used by an employer in loading [or] unloading, . . . a vessel." It is the position of the MLA that regardless of the rule to be applied, one rule should be applicable throughout the United States to ensure the uniform application of the Act.

CONCLUSION

The Maritime Law Association of United States respectfully requests that Court grant a writ of certiorari to resolve this important question of uniformity under the Longshore and Harbor Workers' Compensation Act.

Respectfully submitted,

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